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SENATE BILL 74

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Cisco McSorley

FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

RELATING TO BUSINESS; MAKING TECHNICAL AMENDMENTS TO THE
UNIFORM COMMERCIAL CODE; AMENDING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 55-1-303 NMSA 1978 (being Laws 2005,
Chapter 144, Section 17) is amended to read:

"55-1-303. COURSE OF PERFORMANCE, COURSE OF DEALING AND
USAGE OF TRADE.--

(a) A "course of performance" is a sequence of
conduct between the parties to a particular transaction that
exists if:

(1) the agreement of the parties with respect
to the transaction involves repeated occasions for performance
by a party; and

(2) the other party, with knowledge of the

1 nature of the performance and opportunity for objection to it,
2 accepts the performance or acquiesces in it without objection.

3 (b) A "course of dealing" is a sequence of conduct
4 concerning previous transactions between the parties to a
5 particular transaction that is fairly to be regarded as
6 establishing a common basis of understanding for interpreting
7 their expressions and other conduct.

8 (c) A "usage of trade" is any practice or method of
9 dealing having such regularity of observance in a place,
10 vocation or trade as to justify an expectation that it will be
11 observed with respect to the transaction in question. The
12 existence and scope of such a usage must be proved as facts.
13 If it is established that such a usage is embodied in a trade
14 code or similar record, the interpretation of the record is a
15 question of law.

16 (d) A course of performance or course of dealing
17 between the parties or usage of trade in the vocation or trade
18 in which they are engaged or of which they are or should be
19 aware is relevant in ascertaining the meaning of the parties'
20 agreement, may give particular meaning to specific terms of the
21 agreement and may supplement or qualify the terms of the
22 agreement. A usage of trade applicable in the place in which
23 part of the performance under the agreement is to occur may be
24 so utilized as to that part of the performance.

25 (e) Except as otherwise provided in Subsection (f)

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1 of this section, the express terms of an agreement and any
2 applicable course of performance, course of dealing or usage of
3 trade must be construed whenever reasonable as consistent with
4 each other. If such a construction is unreasonable:

5 (1) express terms prevail over course of
6 performance, course of dealing and usage of trade;

7 (2) course of performance prevails over course
8 of dealing and usage of trade; and

9 (3) course of dealing prevails over usage of
10 trade.

11 (f) Subject to [~~Section~~] Sections 55-2-209 and
12 55-2A-208 NMSA 1978, a course of performance is relevant to
13 show a waiver or modification of any term inconsistent with the
14 course of performance.

15 (g) Evidence of a relevant usage of trade offered
16 by one party is not admissible unless that party has given the
17 other party notice that the court finds sufficient to prevent
18 unfair surprise to the other party."

19 Section 2. Section 55-3-103 NMSA 1978 (being Laws 1992,
20 Chapter 114, Section 90, as amended) is amended to read:

21 "55-3-103. DEFINITIONS.--

22 (a) In this article:

23 (1) "acceptor" means a drawee who has accepted
24 a draft;

25 (2) "consumer account" means an account

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1 established by an individual primarily for personal, family or
2 household purposes;

3 (3) "consumer transaction" means a transaction
4 in which an individual incurs an obligation primarily for
5 personal, family or household purposes;

6 [~~(2)~~] (4) "drawee" means a person ordered in a
7 draft to make payment;

8 [~~(3)~~] (5) "drawer" means a person who signs or
9 is identified in a draft as a person ordering payment;

10 [~~(4)~~] (6) [Reserved];

11 [~~(5)~~] (7) "maker" means a person who signs or
12 is identified in a note as a person undertaking to pay;

13 [~~(6)~~] (8) "order" means a written instruction
14 to pay money signed by the person giving the instruction. The
15 instruction may be addressed to any person, including the
16 person giving the instruction, or to one or more persons
17 jointly or in the alternative but not in succession. An
18 authorization to pay is not an order unless the person
19 authorized to pay is also instructed to pay;

20 [~~(7)~~] (9) "ordinary care" in the case of a
21 person engaged in business means observance of reasonable
22 commercial standards, prevailing in the area in which the
23 person is located, with respect to the business in which the
24 person is engaged. In the case of a bank that takes an
25 instrument for processing for collection or payment by

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1 automated means, reasonable commercial standards do not require
2 the bank to examine the instrument if the failure to examine
3 does not violate the bank's prescribed procedures and the
4 bank's procedures do not vary unreasonably from general banking
5 usage not disapproved by this article or Chapter 55, Article 4
6 NMSA 1978;

7 ~~[(8)]~~ (10) "party" means a party to an
8 instrument;

9 (11) "principal obligor" with respect to an
10 instrument means the accommodated party or any other party to
11 the instrument against whom a secondary obligor has recourse
12 pursuant to this article;

13 ~~[(9)]~~ (12) "promise" means a written
14 undertaking to pay money signed by the person undertaking to
15 pay. An acknowledgment of an obligation by the obligor is not
16 a promise unless the obligor also undertakes to pay the
17 obligation;

18 ~~[(10)]~~ (13) "prove" with respect to a fact
19 means to meet the burden of establishing the fact (Paragraph
20 (8) of Subsection (b) of Section 55-1-201 NMSA 1978); ~~[and]~~

21 (14) [Reserved];

22 ~~[(11)]~~ (15) "remitter" means a person who
23 purchases an instrument from its issuer if the instrument is
24 payable to an identified person other than the purchaser;

25 (16) [Reserved]; and

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1 (17) "secondary obligor" with respect to an
2 instrument means: (i) an indorser or an accommodation party;
3 (ii) a drawer having the obligation described in Subsection (d)
4 of Section 55-3-414 NMSA 1978; or (iii) any other party to the
5 instrument that has recourse against another party to the
6 instrument pursuant to Subsection (b) of Section 55-3-116 NMSA
7 1978.

8 (b) Other definitions applying to this article and
9 the sections in which they appear are:

10 "acceptance"	Section 55-3-409 NMSA 1978;
11 "accommodated party"	Section 55-3-419 NMSA 1978;
12 "accommodation party"	Section 55-3-419 NMSA 1978;
13 "alteration"	Section 55-3-407 NMSA 1978;
14 "anomalous indorsement"	Section 55-3-205 NMSA 1978;
15 "blank indorsement"	Section 55-3-205 NMSA 1978;
16 "cashier's check"	Section 55-3-104 NMSA 1978;
17 "certificate of deposit"	Section 55-3-104 NMSA 1978;
18 "certified check"	Section 55-3-409 NMSA 1978;
19 "check"	Section 55-3-104 NMSA 1978;
20 "consideration"	Section 55-3-303 NMSA 1978;
21 "draft"	Section 55-3-104 NMSA 1978;
22 "holder in due course"	Section 55-3-302 NMSA 1978;
23 "incomplete instrument"	Section 55-3-115 NMSA 1978;
24 "indorsement"	Section 55-3-204 NMSA 1978;
25 "indorser"	Section 55-3-204 NMSA 1978;

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1 "instrument" Section 55-3-104 NMSA 1978;
2 "issue" Section 55-3-105 NMSA 1978;
3 "issuer" Section 55-3-105 NMSA 1978;
4 "negotiable instrument" Section 55-3-104 NMSA 1978;
5 "negotiation" Section 55-3-201 NMSA 1978;
6 "note" Section 55-3-104 NMSA 1978;
7 "payable at a definite
8 time" Section 55-3-108 NMSA 1978;
9 "payable on demand" Section 55-3-108 NMSA 1978;
10 "payable to bearer" Section 55-3-109 NMSA 1978;
11 "payable to order" Section 55-3-109 NMSA 1978;
12 "payment" Section 55-3-602 NMSA 1978;
13 "person entitled to
14 enforce" Section 55-3-301 NMSA 1978;
15 "presentment" Section 55-3-501 NMSA 1978;
16 "reacquisition" Section 55-3-207 NMSA 1978;
17 "special indorsement" Section 55-3-205 NMSA 1978;
18 "teller's check" Section 55-3-104 NMSA 1978;
19 "transfer of instrument" Section 55-3-203 NMSA 1978;
20 "traveler's check" Section 55-3-104 NMSA 1978;
21 and
22 "value" Section 55-3-303 NMSA 1978.
23 (c) The following definitions in other articles
24 apply to this article:
25 [~~"bank" Section 55-4-105 NMSA 1978;~~]

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1 "account" Section 55-4-104 NMSA 1978;
2 "banking day" Section 55-4-104 NMSA 1978;
3 "clearing house" Section 55-4-104 NMSA 1978;
4 "collecting bank" Section 55-4-105 NMSA 1978;
5 "depository bank" Section 55-4-105 NMSA 1978;
6 "documentary draft" Section 55-4-104 NMSA 1978;
7 "intermediary bank" Section 55-4-105 NMSA 1978;
8 "item" Section 55-4-104 NMSA 1978;
9 "payor bank" Section 55-4-105 NMSA 1978;

10 and

11 "suspends payments" Section 55-4-104 NMSA 1978.

12 (d) In addition, Chapter 55, Article 1 NMSA 1978
13 contains general definitions and principles of construction and
14 interpretation applicable throughout this article."

15 Section 3. Section 55-3-106 NMSA 1978 (being Laws 1992,
16 Chapter 114, Section 93) is amended to read:

17 "55-3-106. UNCONDITIONAL PROMISE OR ORDER.--

18 (a) Except as provided in this section, for the
19 purposes of Section 55-3-104(a) NMSA 1978, a promise or order is
20 unconditional unless it states: (i) an express condition to
21 payment; (ii) that the promise or order is subject to or
22 governed by another [~~writing~~] record; or (iii) that rights or
23 obligations with respect to the promise or order are stated in
24 another [~~writing~~] record. A reference to another [~~writing~~]
25 record does not of itself make the promise or order conditional.

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1 (b) A promise or order is not made conditional: (i)
2 by a reference to another ~~writing~~ record for a statement of
3 rights with respect to collateral, prepayment or acceleration;
4 or (ii) because payment is limited to resort to a particular
5 fund or source.

6 (c) If a promise or order requires, as a condition
7 to payment, a countersignature by a person whose specimen
8 signature appears on the promise or order, the condition does
9 not make the promise or order conditional for the purposes of
10 Section 55-3-104(a) NMSA 1978. If the person whose specimen
11 signature appears on an instrument fails to countersign the
12 instrument, the failure to countersign is a defense to the
13 obligation of the issuer, but the failure does not prevent a
14 transferee of the instrument from becoming a holder of the
15 instrument.

16 (d) If a promise or order at the time it is issued
17 or first comes into possession of a holder contains a statement,
18 required by applicable statutory or administrative law, to the
19 effect that the rights of a holder or transferee are subject to
20 claims or defenses that the issuer could assert against the
21 original payee, the promise or order is not thereby made
22 conditional for the purposes of Section 55-3-104(a) NMSA 1978;
23 but if the promise or order is an instrument, there cannot be a
24 holder in due course of the instrument."

25 Section 4. Section 55-3-116 NMSA 1978 (being Laws 1992,

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1 Chapter 114, Section 103) is amended to read:

2 "55-3-116. JOINT AND SEVERAL LIABILITY--CONTRIBUTION.--

3 (a) Except as otherwise provided in the instrument,
4 two or more persons who have the same liability on an instrument
5 as makers, drawers, acceptors, indorsers who indorse as joint
6 payees or anomalous indorsers are jointly and severally liable
7 in the capacity in which they sign.

8 (b) Except as provided in Section 55-3-419(e) NMSA
9 1978 or by agreement of the affected parties, a party having
10 joint and several liability who pays the instrument is entitled
11 to receive from any party having the same joint and several
12 liability contribution in accordance with applicable law.

13 [~~(c) Discharge of one party having joint and several~~
14 ~~liability by a person entitled to enforce the instrument does~~
15 ~~not affect the right under Subsection (b) of a party having the~~
16 ~~same joint and several liability to receive contribution from~~
17 ~~the party discharged.]"~~

18 Section 5. Section 55-3-119 NMSA 1978 (being Laws 1992,
19 Chapter 114, Section 106) is amended to read:

20 "55-3-119. NOTICE OF RIGHT TO DEFEND ACTION.--In an action
21 for breach of an obligation for which a third person is
22 answerable over pursuant to [~~this article or~~] Chapter 55,
23 Article 3 or 4 NMSA 1978, the defendant may give the third
24 person [~~written~~] notice of the litigation in a record, and the
25 person notified may then give similar notice to any other person

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1 who is answerable over. If the notice states: (i) that the
2 person notified may come in and defend; and (ii) that failure to
3 do so will bind the person notified in an action later brought
4 by the person giving the notice as to any determination of fact
5 common to the two litigations, the person notified is so bound
6 unless after seasonable receipt of the notice the person
7 notified does come in and defend."

8 Section 6. Section 55-3-305 NMSA 1978 (being Laws 1992,
9 Chapter 114, Section 118) is amended to read:

10 "55-3-305. DEFENSES AND CLAIMS IN RECOUPMENT.--

11 (a) Except as [~~stated in Subsection (b)~~] otherwise
12 provided in this section, the right to enforce the obligation of
13 a party to pay an instrument is subject to the following:

14 (1) a defense of the obligor based on: (i)
15 infancy of the obligor to the extent it is a defense to a simple
16 contract; (ii) duress, lack of legal capacity or illegality of
17 the transaction [~~which~~] that, under other law, nullifies the
18 obligation of the obligor; (iii) fraud that induced the obligor
19 to sign the instrument with neither knowledge nor reasonable
20 opportunity to learn of its character or its essential terms; or
21 (iv) discharge of the obligor in insolvency proceedings;

22 (2) a defense of the obligor stated in another
23 section of [~~this~~] Chapter 55, Article 3 NMSA 1978 or a defense
24 of the obligor that would be available if the person entitled to
25 enforce the instrument were enforcing a right to payment under a

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1 simple contract; and

2 (3) a claim in recoupment of the obligor
3 against the original payee of the instrument if the claim arose
4 from the transaction that gave rise to the instrument; but the
5 claim of the obligor may be asserted against a transferee of the
6 instrument only to reduce the amount owing on the instrument at
7 the time the action is brought.

8 (b) The right of a holder in due course to enforce
9 the obligation of a party to pay the instrument is subject to
10 defenses of the obligor stated in Subsection (a)(1) of this
11 section, but is not subject to defenses of the obligor stated in
12 Subsection (a)(2) of this section or claims in recoupment stated
13 in Subsection (a)(3) of this section against a person other than
14 the holder.

15 (c) Except as stated in Subsection (d) of this
16 section, in an action to enforce the obligation of a party to
17 pay the instrument, the obligor shall not assert against the
18 person entitled to enforce the instrument a defense, claim in
19 recoupment or claim to the instrument (Section 55-3-306 NMSA
20 1978) of another person, but the other person's claim to the
21 instrument may be asserted by the obligor if the other person is
22 joined in the action and personally asserts the claim against
23 the person entitled to enforce the instrument. An obligor is
24 not obliged to pay the instrument if the person seeking
25 enforcement of the instrument does not have rights of a holder

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1 in due course and the obligor proves that the instrument is a
2 lost or stolen instrument.

3 (d) In an action to enforce the obligation of an
4 accommodation party to pay an instrument, the accommodation
5 party may assert against the person entitled to enforce the
6 instrument any defense or claim in recoupment under Subsection
7 (a) of this section that the accommodated party could assert
8 against the person entitled to enforce the instrument, except
9 the defenses of discharge in insolvency proceedings, infancy
10 and lack of legal capacity.

11 (e) In a consumer transaction, if law other than
12 this chapter requires that an instrument include a statement to
13 the effect that the rights of a holder or transferee are subject
14 to a claim or a defense that the issuer could assert against the
15 original payee and the instrument does not include such a
16 statement:

17 (1) the instrument has the same effect as if
18 the instrument included such a statement;

19 (2) the issuer may assert against the holder or
20 transferee all claims and defenses that would have been
21 available if the instrument had included such a statement; and

22 (3) the extent to which claims may be asserted
23 against the holder or transferee is determined as if the
24 instrument included such a statement.

25 If an instrument includes or is deemed to include a

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1 statement under this subsection, a holder or transferee who is
2 liable under the statement to the issuer, but who is not the
3 seller of the goods or services, shall be entitled to full
4 indemnity from the seller for any liability under the statement
5 incurred by the holder or transferee that results from the
6 issuer's claims or defenses against the seller, plus reasonable
7 attorney fees. The provision in this section for express
8 indemnity does not affect any right of indemnity, subrogation or
9 recovery to which a holder or transferee may be entitled under a
10 contract or other law. This section is not intended to provide
11 a holder or transferee indemnity from the seller with respect to
12 the holder or transferee's direct liability to the issuer for
13 the holder or transferee's own actionable misconduct unrelated
14 to derivative liability under the statement.

15 (f) This section is subject to law other than this
16 article that establishes a different rule for consumer
17 transactions."

18 Section 7. Section 55-3-312 NMSA 1978 (being Laws 1992,
19 Chapter 114, Section 125) is amended to read:

20 "55-3-312. LOST, DESTROYED OR STOLEN CASHIER'S CHECK,
21 TELLER'S CHECK OR CERTIFIED CHECK.--

22 (a) In this section:

23 (1) "check" means a cashier's check, teller's
24 check or certified check;

25 (2) "claimant" means a person who claims the

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1 right to receive the amount of a cashier's check, teller's check
2 or certified check that was lost, destroyed or stolen;

3 (3) "declaration of loss" means a ~~written~~
4 statement, made in a record under penalty of perjury, to the
5 effect that: (i) the declarer lost possession of a check; (ii)
6 the declarer is the drawer or payee of the check, in the case of
7 a certified check, or the remitter or payee of the check, in the
8 case of a cashier's check or teller's check; (iii) the loss of
9 possession was not the result of a transfer by the declarer or a
10 lawful seizure; and (iv) the declarer cannot reasonably obtain
11 possession of the check because the check was destroyed, its
12 whereabouts cannot be determined or it is in the wrongful
13 possession of an unknown person or a person that cannot be found
14 or is not amenable to service of process; and

15 (4) "obligated bank" means the issuer of a
16 cashier's check or teller's check or the acceptor of a certified
17 check.

18 (b) A claimant may assert a claim to the amount of a
19 check by a communication to the obligated bank describing the
20 check with reasonable certainty and requesting payment of the
21 amount of the check, if: (i) the claimant is the drawer or
22 payee of a certified check or the remitter or payee of a
23 cashier's check or teller's check; (ii) the communication
24 contains or is accompanied by a declaration of loss of the
25 claimant with respect to the check; (iii) the communication is

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1 received at a time and in a manner affording the bank a
2 reasonable time to act on it before the check is paid; and (iv)
3 the claimant provides reasonable identification if requested by
4 the obligated bank. Delivery of a declaration of loss is a
5 warranty of the truth of the statements made in the declaration.
6 If a claim is asserted in compliance with this subsection, the
7 following rules apply:

8 (1) the claim becomes enforceable at the later
9 of: (i) the time the claim is asserted; or (ii) the ninetieth
10 day following the date of the check, in the case of a cashier's
11 check or teller's check, or the ninetieth day following the date
12 of the acceptance in the case of a certified check;

13 (2) until the claim becomes enforceable, it has
14 no legal effect and the obligated bank may pay the check or, in
15 the case of a teller's check, may permit the drawee to pay the
16 check. Payment to a person entitled to enforce the check
17 discharges all liability of the obligated bank with respect to
18 the check;

19 (3) if the claim becomes enforceable before the
20 check is presented for payment, the obligated bank is not
21 obliged to pay the check; and

22 (4) when the claim becomes enforceable, the
23 obligated bank becomes obliged to pay the amount of the check to
24 the claimant if payment of the check has not been made to a
25 person entitled to enforce the check. Subject to Section

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1 55-4-302 NMSA 1978, payment to the claimant discharges all
2 liability of the obligated bank with respect to the check.

3 (c) If the obligated bank pays the amount of a check
4 to a claimant under Subsection (b)(4) of this section and the
5 check is presented for payment by a person having rights of a
6 holder in due course, the claimant is obliged to: (i) refund
7 the payment to the obligated bank if the check is paid; or (ii)
8 pay the amount of the check to the person having rights of a
9 holder in due course if the check is dishonored.

10 (d) If a claimant has the right to assert a claim
11 under Subsection (b) of this section and is also a person
12 entitled to enforce a cashier's check, teller's check or
13 certified check ~~[which]~~ that is lost, destroyed or stolen, the
14 claimant may assert rights with respect to the check either
15 under this section or Section 55-3-309 NMSA 1978."

16 Section 8. Section 55-3-419 NMSA 1978 (being Laws 1992,
17 Chapter 114, Section 144) is amended to read:

18 "55-3-419. INSTRUMENTS SIGNED FOR ACCOMMODATION.--

19 (a) If an instrument is issued for value given for
20 the benefit of a party to the instrument ("accommodated party")
21 and another party to the instrument ("accommodation party")
22 signs the instrument for the purpose of incurring liability on
23 the instrument without being a direct beneficiary of the value
24 given for the instrument, the instrument is signed by the
25 accommodation party "for accommodation".

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1 (b) An accommodation party may sign the instrument
2 as maker, drawer, acceptor or indorser and, subject to
3 Subsection (d) of this section, is obliged to pay the instrument
4 in the capacity in which the accommodation party signs. The
5 obligation of an accommodation party may be enforced
6 notwithstanding any statute of frauds and whether or not the
7 accommodation party receives consideration for the
8 accommodation.

9 (c) A person signing an instrument is presumed to be
10 an accommodation party and there is notice that the instrument
11 is signed for accommodation if the signature is an anomalous
12 indorsement or is accompanied by words indicating that the
13 signer is acting as surety or guarantor with respect to the
14 obligation of another party to the instrument. Except as
15 provided in Section 55-3-605 NMSA 1978, the obligation of an
16 accommodation party to pay the instrument is not affected by the
17 fact that the person enforcing the obligation had notice when
18 the instrument was taken by that person that the accommodation
19 party signed the instrument for accommodation.

20 (d) If the signature of a party to an instrument is
21 accompanied by words indicating unambiguously that the party is
22 guaranteeing collection rather than payment of the obligation of
23 another party to the instrument, the signer is obliged to pay
24 the amount due on the instrument to a person entitled to enforce
25 the instrument only if: (i) execution of judgment against the

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1 other party has been returned unsatisfied; (ii) the other party
2 is insolvent or in an insolvency proceeding; (iii) the other
3 party cannot be served with process; or (iv) it is otherwise
4 apparent that payment cannot be obtained from the other party.

5 (e) If the signature of a party to an instrument is
6 accompanied by words indicating that the party guarantees
7 payment or the signer signs the instrument as an accommodation
8 party in some other manner that does not unambiguously indicate
9 an intention to guarantee collection rather than payment, the
10 signer is obliged to pay the amount due on the instrument to a
11 person entitled to enforce the instrument in the same
12 circumstances as the accommodated party would be obliged,
13 without prior resort to the accommodated party by the person
14 entitled to enforce the instrument.

15 [~~e~~] (f) An accommodation party [~~who~~] that pays the
16 instrument is entitled to reimbursement from the accommodated
17 party and is entitled to enforce the instrument against the
18 accommodated party. In proper circumstances, an accommodation
19 party may obtain relief that requires the accommodated party to
20 perform its obligations on the instrument. An accommodated
21 party [~~who~~] that pays the instrument has no right of recourse
22 against, and is not entitled to contribution from, an
23 accommodation party."

24 Section 9. Section 55-3-602 NMSA 1978 (being Laws 1992,
25 Chapter 114, Section 152) is amended to read:

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1 "55-3-602. PAYMENT.--

2 (a) Subject to Subsection [~~(b)~~] (e) of this section,
3 an instrument is paid to the extent payment is made [~~(i)~~] by or
4 on behalf of a party obliged to pay the instrument and [~~(ii)~~] to
5 a person entitled to enforce the instrument. To the extent of
6 the payment, the obligation of the party obliged to pay the
7 instrument is discharged, even though payment is made with
8 knowledge of a claim to the instrument under Section 55-3-306
9 NMSA 1978 by another person.

10 (b) Subject to Subsection (e) of this section, a
11 note is paid to the extent payment is made by or on behalf of a
12 party obliged to pay the note to a person that formerly was
13 entitled to enforce the note only if at the time of the payment
14 the party obliged to pay has not received adequate notification
15 that the note has been transferred and that payment is to be
16 made to the transferee. A notification is adequate only if it
17 is signed by the transferor or the transferee, reasonably
18 identifies the transferred note and provides an address at which
19 payments subsequently are to be made. Upon request, a
20 transferee shall seasonably furnish reasonable proof that the
21 note has been transferred. Unless the transferee complies with
22 the request, a payment to the person that formerly was entitled
23 to enforce the note is effective for purposes of Subsection (c)
24 of this section even if the party obliged to pay the note has
25 received a notification pursuant to this subsection.

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1 (c) Subject to Subsection (e) of this section, to
2 the extent of a payment pursuant to Subsections (a) and (b) of
3 this section, the obligation of the party obliged to pay the
4 instrument is discharged, even though payment is made with
5 knowledge of a claim to the instrument pursuant to Section
6 55-3-306 NMSA 1978 by another person.

7 (d) Subject to Subsection (e) of this section, a
8 transferee, or any party that has acquired rights in the
9 instrument directly or indirectly from a transferee, including
10 any such party that has rights as a holder in due course, is
11 deemed to have notice of any payment that is made pursuant to
12 Subsection (b) of this section after the date that the note is
13 transferred to the transferee, but before the party obliged to
14 pay the note receives adequate notification of the transfer.

15 ~~(b)~~ (e) The obligation of a party to pay the
16 instrument is not discharged [~~under Subsection (a)~~] pursuant to
17 Subsections (a) through (d) of this section if:

18 (1) a claim to the instrument under Section
19 55-3-306 NMSA 1978 is enforceable against the party receiving
20 payment and: (i) payment is made with knowledge by the payor
21 that payment is prohibited by injunction or similar process of a
22 court of competent jurisdiction; or (ii) in the case of an
23 instrument other than a cashier's check, teller's check or
24 certified check, the party making payment accepted, from the
25 person having a claim to the instrument, indemnity against loss

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1 resulting from refusal to pay the person entitled to enforce the
2 instrument; or

3 (2) the person making payment knows that the
4 instrument is a stolen instrument and pays a person it knows is
5 in wrongful possession of the instrument.

6 (f) As used in this section, "signed" with respect
7 to a record that is not a writing includes the attachment to or
8 logical association with the record of an electronic symbol,
9 sound or process with the present intent to adopt or accept the
10 record."

11 Section 10. Section 55-3-604 NMSA 1978 (being Laws 1992,
12 Chapter 114, Section 154) is amended to read:

13 "55-3-604. DISCHARGE BY CANCELLATION OR RENUNCIATION.--

14 (a) A person entitled to enforce an instrument, with
15 or without consideration, may discharge the obligation of a
16 party to pay the instrument: (i) by an intentional voluntary
17 act, such as surrender of the instrument to the party;
18 destruction, mutilation or cancellation of the instrument;
19 cancellation or striking out of the party's signature; or the
20 addition of words to the instrument indicating discharge; or
21 (ii) by agreeing not to sue or otherwise renouncing rights
22 against the party by a signed ~~[writing]~~ record.

23 (b) Cancellation or striking out of an indorsement
24 pursuant to Subsection (a) of this section does not affect the
25 status and rights of a party derived from the indorsement.

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1 (c) As used in this section, "signed" with respect
2 to a record that is not a writing includes the attachment to or
3 logical association with the record of an electronic symbol,
4 sound or process with the present intent to adopt or accept the
5 record."

6 Section 11. Section 55-3-605 NMSA 1978 (being Laws 1992,
7 Chapter 114, Section 155) is amended to read:

8 "55-3-605. DISCHARGE OF [~~INDORSERS AND ACCOMMODATION~~
9 ~~PARTIES]~~ SECONDARY OBLIGORS.--

10 ~~[(a) In this section, the term "indorser" includes a~~
11 ~~drawer having the obligation described in Section 55-3-414(d)~~
12 ~~NMSA 1978.~~

13 ~~(b) Discharge, under Section 55-3-604 NMSA 1978, of~~
14 ~~the obligation of a party to pay an instrument does not~~
15 ~~discharge the obligation of an indorser or accommodation party~~
16 ~~having a right of recourse against the discharged party.~~

17 ~~(c) If a person entitled to enforce an instrument~~
18 ~~agrees, with or without consideration, to an extension of the~~
19 ~~due date of the obligation of a party to pay the instrument, the~~
20 ~~extension discharges an indorser or accommodation party having a~~
21 ~~right of recourse against the party whose obligation is extended~~
22 ~~to the extent the indorser or accommodation party proves that~~
23 ~~the extension caused loss to the indorser or accommodation party~~
24 ~~with respect to the right of recourse.~~

25 ~~(d) If a person entitled to enforce an instrument~~

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1 ~~agrees, with or without consideration, to a material~~
2 ~~modification of the obligation of a party other than an~~
3 ~~extension of the due date, the modification discharges the~~
4 ~~obligation of an indorser or accommodation party having a right~~
5 ~~of recourse against the person whose obligation is modified to~~
6 ~~the extent the modification causes loss to the indorser or~~
7 ~~accommodation party with respect to the right of recourse. The~~
8 ~~loss suffered by the indorser or accommodation party as a result~~
9 ~~of the modification is equal to the amount of the right of~~
10 ~~recourse unless the person enforcing the instrument proves that~~
11 ~~no loss was caused by the modification or that the loss caused~~
12 ~~by the modification was an amount less than the amount of the~~
13 ~~right of recourse.~~

14 ~~(e) If the obligation of a party to pay an~~
15 ~~instrument is secured by an interest in collateral and a person~~
16 ~~entitled to enforce the instrument impairs the value of the~~
17 ~~interest in collateral, the obligation of an indorser or~~
18 ~~accommodation party having a right of recourse against the~~
19 ~~obligor is discharged to the extent of the impairment. The~~
20 ~~value of an interest in collateral is impaired to the extent (i)~~
21 ~~the value of the interest is reduced to an amount less than the~~
22 ~~amount of the right of recourse of the party asserting~~
23 ~~discharge, or (ii) the reduction in value of the interest causes~~
24 ~~an increase in the amount by which the amount of the right of~~
25 ~~recourse exceeds the value of the interest. The burden of~~

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1 ~~proving impairment is on the party asserting discharge.~~

2 ~~(f) If the obligation of a party is secured by an~~
3 ~~interest in collateral not provided by an accommodation party~~
4 ~~and a person entitled to enforce the instrument impairs the~~
5 ~~value of the interest in collateral, the obligation of any party~~
6 ~~who is jointly and severally liable with respect to the secured~~
7 ~~obligation is discharged to the extent the impairment causes the~~
8 ~~party asserting discharge to pay more than that party would have~~
9 ~~been obliged to pay, taking into account rights of contribution,~~
10 ~~if impairment had not occurred. If the party asserting~~
11 ~~discharge is an accommodation party not entitled to discharge~~
12 ~~under Subsection (e), the party is deemed to have a right to~~
13 ~~contribution based on joint and several liability rather than a~~
14 ~~right to reimbursement. The burden of proving impairment is on~~
15 ~~the party asserting discharge.~~

16 ~~(g) Under Subsection (e) or (f), impairing value of~~
17 ~~an interest in collateral includes (i) failure to obtain or~~
18 ~~maintain perfection or recordation of the interest in~~
19 ~~collateral, (ii) release of collateral without substitution of~~
20 ~~collateral of equal value, (iii) failure to perform a duty to~~
21 ~~preserve the value of collateral owed, under Article 9 or other~~
22 ~~law, to a debtor or surety or other person secondarily liable,~~
23 ~~or (iv) failure to comply with applicable law in disposing of~~
24 ~~collateral.~~

25 ~~(h) An accommodation party is not discharged under~~

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1 ~~Subsection (c), (d), or (e) unless the person entitled to~~
2 ~~enforce the instrument knows of the accommodation or has notice~~
3 ~~under Section 55-3-419(c) NMSA 1978 that the instrument was~~
4 ~~signed for accommodation.~~

5 ~~(i) A party is not discharged under this section if~~
6 ~~(i) the party asserting discharge consents to the event or~~
7 ~~conduct that is the basis of the discharge, or (ii) the~~
8 ~~instrument or a separate agreement of the party provides for~~
9 ~~waiver of discharge under this section either specifically or by~~
10 ~~general language indicating that parties waive defenses based on~~
11 ~~suretyship or impairment of collateral.]~~

12 (a) If a person entitled to enforce an instrument
13 releases the obligation of a principal obligor in whole or in
14 part and another party to the instrument is a secondary obligor
15 with respect to the obligation of that principal obligor, the
16 following rules apply:

17 (1) any obligations of the principal obligor to
18 the secondary obligor with respect to any previous payment by
19 the secondary obligor are not affected. Unless the terms of the
20 release preserve the secondary obligor's recourse, the principal
21 obligor is discharged, to the extent of the release, from any
22 other duties to the secondary obligor pursuant to this article;

23 (2) unless the terms of the release provide
24 that the person entitled to enforce the instrument retains the
25 right to enforce the instrument against the secondary obligor,

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1 the secondary obligor is discharged to the same extent as the
2 principal obligor from any unperformed portion of its obligation
3 on the instrument. If the instrument is a check and the
4 obligation of the secondary obligor is based on an indorsement
5 of the check, the secondary obligor is discharged without regard
6 to the language or circumstances of the discharge or other
7 release; and

8 (3) if the secondary obligor is not discharged
9 pursuant to Paragraph (2) of this subsection, the secondary
10 obligor is discharged to the extent of the value of the
11 consideration for the release and to the extent that the release
12 would otherwise cause the secondary obligor a loss.

13 (b) If a person entitled to enforce an instrument
14 grants a principal obligor an extension of the time at which one
15 or more payments are due on the instrument and another party to
16 the instrument is a secondary obligor with respect to the
17 obligation of that principal obligor, the following rules apply:

18 (1) any obligations of the principal obligor to
19 the secondary obligor with respect to any previous payment by
20 the secondary obligor are not affected. Unless the terms of the
21 extension preserve the secondary obligor's recourse, the
22 extension correspondingly extends the time for performance of
23 any other duties owed to the secondary obligor by the principal
24 obligor pursuant to this article;

25 (2) the secondary obligor is discharged to the

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1 extent that the extension would otherwise cause the secondary
2 obligor a loss; and

3 (3) to the extent that the secondary obligor is
4 not discharged pursuant to Paragraph (2) of this subsection, the
5 secondary obligor either may perform its obligations to a person
6 entitled to enforce the instrument as if the time for payment
7 had not been extended or, unless the terms of the extension
8 provide that the person entitled to enforce the instrument
9 retains the right to enforce the instrument against the
10 secondary obligor as if the time for payment had not been
11 extended, may treat the time for performance of its obligations
12 as having been extended correspondingly.

13 (c) If a person entitled to enforce an instrument
14 agrees, with or without consideration, to a modification of the
15 obligation of a principal obligor, other than a complete or a
16 partial release or an extension of the due date, and another
17 party to the instrument is a secondary obligor with respect to
18 the obligation of that principal obligor, the following rules
19 apply:

20 (1) any obligations of the principal obligor to
21 the secondary obligor with respect to any previous payment by
22 the secondary obligor are not affected. The modification
23 correspondingly modifies any other duties owed to the secondary
24 obligor by the principal obligor pursuant to this article;

25 (2) the secondary obligor is discharged from

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1 any unperformed portion of its obligation to the extent that the
2 modification would otherwise cause the secondary obligor a loss;
3 and

4 (3) to the extent that the secondary obligor is
5 not discharged pursuant to Paragraph (2) of this subsection, the
6 secondary obligor may satisfy its obligation on the instrument
7 as if the modification had not occurred or treat its obligation
8 on the instrument as having been modified correspondingly.

9 (d) If the obligation of a principal obligor is
10 secured by an interest in collateral, if another party to the
11 instrument is a secondary obligor with respect to that
12 obligation, and if a person entitled to enforce the instrument
13 impairs the value of the interest in collateral, the obligation
14 of the secondary obligor is discharged to the extent of the
15 impairment. The value of an interest in collateral is impaired
16 to the extent the value of the interest is reduced to an amount
17 less than the amount of the recourse of the secondary obligor or
18 the reduction in value of the interest causes an increase in the
19 amount by which the amount of the recourse exceeds the value of
20 the interest. For purposes of this subsection, "impairing the
21 value of an interest in collateral" includes failure to obtain
22 or maintain perfection or recordation of the interest in
23 collateral; release of collateral without substitution of
24 collateral of equal value or equivalent reduction of the
25 underlying obligation; failure to perform a duty to preserve the

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1 value of collateral owed, pursuant to Article 9 of the Uniform
2 Commercial Code or other law, to a debtor or other person
3 secondarily liable; and failure to comply with applicable law in
4 disposing of or otherwise enforcing the interest in collateral.

5 (e) A secondary obligor is not discharged pursuant
6 to Paragraph (3) of Subsection (a) of this section or Subsection
7 (b), (c) or (d) of this section unless the person entitled to
8 enforce the instrument knows that the person is a secondary
9 obligor or has notice pursuant to Subsection (c) of Section
10 55-3-419 NMSA 1978 that the instrument was signed for
11 accommodation.

12 (f) A secondary obligor is not discharged pursuant
13 to this section if the secondary obligor consents to the event
14 or conduct that is the basis of the discharge or if the
15 instrument or a separate agreement of the party provides for
16 waiver of discharge pursuant to this section specifically or by
17 general language indicating that parties waive defenses based on
18 suretyship or impairment of collateral. Unless the
19 circumstances indicate otherwise, consent by the principal
20 obligor to an act that would lead to a discharge pursuant to
21 this section constitutes consent to that act by the secondary
22 obligor if the secondary obligor controls the principal obligor
23 or deals with the person entitled to enforce the instrument on
24 behalf of the principal obligor.

25 (g) A release or extension preserves a secondary

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1 obligor's recourse if the terms of the release or extension
2 provide that:

3 (1) the person entitled to enforce the
4 instrument retains the right to enforce the instrument against
5 the secondary obligor; and

6 (2) the recourse of the secondary obligor
7 continues as if the release or extension had not been granted.

8 (h) Except as otherwise provided in Subsection (i)
9 of this section, a secondary obligor asserting discharge
10 pursuant to this section has the burden of persuasion both with
11 respect to the occurrence of the acts alleged to harm the
12 secondary obligor and loss or prejudice caused by those acts.

13 (i) If the secondary obligor demonstrates prejudice
14 caused by an impairment of its recourse and the circumstances of
15 the case indicate that the amount of loss is not reasonably
16 susceptible of calculation or requires proof of facts that are
17 not ascertainable, it is presumed that the act impairing
18 recourse caused a loss or impairment equal to the liability of
19 the secondary obligor on the instrument. In that event, the
20 burden of persuasion as to any lesser amount of the loss is on
21 the person entitled to enforce the instrument."

22 Section 12. Section 55-4-104 NMSA 1978 (being Laws 1961,
23 Chapter 96, Section 4-104, as amended) is amended to read:

24 "55-4-104. DEFINITIONS AND INDEX OF DEFINITIONS.--

25 (a) In Chapter 55, Article 4 NMSA 1978, unless the

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1 context otherwise requires:

2 (1) "account" means any deposit or credit
3 account with a bank, including a demand, time, savings,
4 passbook, share draft or like account, other than an account
5 evidenced by a certificate of deposit;

6 (2) "afternoon" means the period of a day
7 between noon and midnight;

8 (3) "banking day" means the part of a day on
9 which a bank is open to the public for carrying on substantially
10 all of its banking functions;

11 (4) [~~"clearinghouse"~~] "clearing house" means an
12 association of banks or other payors regularly clearing items;

13 (5) "customer" means a person having an account
14 with a bank or for whom a bank has agreed to collect items,
15 including a bank that maintains an account at another bank;

16 (6) "documentary draft" means a draft to be
17 presented for acceptance or payment if specified documents,
18 certificated securities pursuant to Section 55-8-102 NMSA 1978
19 or instructions for uncertificated securities pursuant to
20 Section 55-8-102 NMSA 1978 or other certificates, statements or
21 the like are to be received by the drawee or other payor before
22 acceptance or payment of the drafts;

23 (7) "draft" means a draft as defined in Section
24 55-3-104 NMSA 1978 or an item, other than an instrument, that is
25 an order;

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1 (8) "drawee" means a person ordered in a draft
2 to make payment;

3 (9) "item" means an instrument or a promise or
4 order to pay money handled by a bank for collection or payment.
5 The term does not include a payment order governed by Chapter
6 55, Article 4A NMSA 1978 or a credit or debit card slip;

7 (10) "midnight deadline" with respect to a bank
8 is midnight on its next banking day following the banking day on
9 which it receives the relevant item or notice or from which the
10 time for taking action commences to run, whichever is later;

11 (11) "settle" means to pay in cash, by
12 [~~clearinghouse~~] "clearing-house" settlement, in a charge or
13 credit or by remittance or otherwise as agreed. A settlement
14 may be either provisional or final; and

15 (12) "suspends payments" with respect to a bank
16 means that it has been closed by order of the supervisory
17 authorities, that a public officer has been appointed to take it
18 over or that it ceases or refuses to make payments in the
19 ordinary course of business.

20 (b) Other definitions applying to Chapter 55,
21 Article 4 NMSA 1978 and the sections in which they appear are:

22 "agreement for
23 electronic presentment" Section 55-4-110 NMSA 1978;
24 [~~"bank"~~] ~~Section 55-4-105 NMSA 1978;~~
25 "collecting bank" Section 55-4-105 NMSA 1978;

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1 "depository bank" Section 55-4-105 NMSA 1978;
2 "intermediary bank" Section 55-4-105 NMSA 1978;
3 "payor bank" Section 55-4-105 NMSA 1978;
4 "presenting bank" Section 55-4-105 NMSA 1978; and
5 "presentment notice" Section 55-4-110 NMSA 1978.

6 (c) "Control", as provided in Section 55-7-106 NMSA
7 1978, and the following definitions in other articles apply to
8 Chapter 55, Article 4 NMSA 1978:

9 "acceptance" Section 55-3-409 NMSA 1978;
10 "alteration" Section 55-3-407 NMSA 1978;
11 "cashier's check" Section 55-3-104 NMSA 1978;
12 "certificate of
13 deposit" Section 55-3-104 NMSA 1978;
14 "certified check" Section 55-3-409 NMSA 1978;
15 "check" Section 55-3-104 NMSA 1978;
16 "holder in due
17 course" Section 55-3-302 NMSA 1978;
18 "instrument" Section 55-3-104 NMSA 1978;
19 "notice of dishonor" Section 55-3-503 NMSA 1978;
20 "order" Section 55-3-103 NMSA 1978;
21 "ordinary care" Section 55-3-103 NMSA 1978;
22 "person entitled
23 to enforce" Section 55-3-301 NMSA 1978;
24 "presentment" Section 55-3-501 NMSA 1978;
25 "promise" Section 55-3-103 NMSA 1978;

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1 "prove" Section 55-3-103 NMSA 1978;
2 "teller's check" Section 55-3-104 NMSA 1978; and
3 "unauthorized
4 signature" Section 55-3-403 NMSA 1978.

5 (d) In addition, Chapter 55, Article 1 NMSA 1978
6 contains general definitions and principles of construction and
7 interpretation applicable throughout this article."

8 Section 13. Section 55-4-105 NMSA 1978 (being Laws 1961,
9 Chapter 96, Section 4-105, as amended) is amended to read:

10 "55-4-105. [~~"BANK"--"DEPOSITARY BANK"--"INTERMEDIARY~~
11 ~~BANK"--"COLLECTING BANK"--"PAYOR BANK"--"PRESENTING BANK"]~~
12 DEFINITIONS OF TYPES OF BANKS.--In this article:

13 [~~(1) "bank" means a person engaged in the business~~
14 ~~of banking, including a savings bank, savings and loan~~
15 ~~association, credit union or trust company;~~]

16 (1) [Reserved];

17 (2) "depository bank" means the first bank to take
18 an item even though it is also the payor bank, unless the item
19 is presented for immediate payment over the counter;

20 (3) "payor bank" means a bank that is the drawee of
21 a draft;

22 (4) "intermediary bank" means a bank to which an
23 item is transferred in course of collection, except the
24 depository or payor bank;

25 (5) "collecting bank" means a bank handling an item

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1 for collection except the payor bank; and

2 (6) "presenting bank" means a bank presenting an
3 item, except a payor bank."

4 Section 14. Section 55-4-212 NMSA 1978 (being Laws 1961,
5 Chapter 96, Section 4-210, as amended) is amended to read:

6 "55-4-212. PRESENTMENT BY NOTICE OF ITEM NOT PAYABLE BY,
7 THROUGH OR AT A BANK--LIABILITY OF DRAWER OR INDORSER.--

8 (a) Unless otherwise instructed, a collecting bank
9 may present an item not payable by, through or at a bank by
10 sending to the party to accept or pay a [~~written~~] record
11 providing notice that the bank holds the item for acceptance or
12 payment. The notice must be sent in time to be received on or
13 before the day when presentment is due, and the bank must meet
14 any requirement of the party to accept or pay under Section
15 55-3-501 NMSA 1978 by the close of the bank's next banking day
16 after it knows of the requirement.

17 (b) If presentment is made by notice and payment,
18 acceptance or request for compliance with a requirement under
19 Section 55-3-501 NMSA 1978 is not received by the close of
20 business on the day after maturity, or, in the case of demand
21 items, by the close of business on the third banking day after
22 notice was sent, the presenting bank may treat the item as
23 dishonored and charge any drawer or indorser by sending it
24 notice of the facts."

25 Section 15. Section 55-4-301 NMSA 1978 (being Laws 1961,

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1 Chapter 96, Section 4-301, as amended) is amended to read:

2 "55-4-301. DEFERRED POSTING--RECOVERY OF PAYMENT BY RETURN
3 OF ITEMS--TIME OF DISHONOR--RETURN OF ITEMS BY PAYOR BANK.--

4 (a) If a payor bank settles for a demand item other
5 than a documentary draft presented otherwise than for immediate
6 payment over the counter before midnight of the banking day of
7 receipt, the payor bank may revoke the settlement and recover
8 the settlement if, before it has made final payment and before
9 its midnight deadline, it:

10 (1) returns the item; [~~or~~]

11 (2) returns an image of the item, if the party
12 to which the return is made has entered into an agreement to
13 accept an image as a return of the item and the image is
14 returned in accordance with that agreement; or

15 [~~(2)~~] (3) sends [~~written~~] a record providing
16 notice of dishonor or nonpayment if the item is unavailable for
17 return.

18 (b) If a demand item is received by a payor bank for
19 credit on its books, it may return the item or send notice of
20 dishonor and may revoke any credit given or recover the amount
21 thereof withdrawn by its customer if it acts within the time
22 limit and in the manner specified in Subsection (a) of this
23 section.

24 (c) Unless previous notice of dishonor has been
25 sent, an item is dishonored at the time when, for purposes of

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1 dishonor, it is returned or notice is sent in accordance with
2 this section.

3 (d) An item is returned:

4 (1) as to an item presented through a
5 [~~clearinghouse~~] clearing house, when it is delivered to the
6 presenting or last collecting bank or to the [~~clearinghouse~~]
7 clearing house or is sent or delivered in accordance with
8 clearing-house rules; or

9 (2) in all other cases, when it is sent or
10 delivered to the bank's customer or transferor or pursuant to
11 [~~his~~] the customer's instructions."

12 Section 16. Section 55-4-403 NMSA 1978 (being Laws 1961,
13 Chapter 96, Section 4-403, as amended) is amended to read:

14 "55-4-403. CUSTOMER'S RIGHT TO STOP PAYMENT--BURDEN OF
15 PROOF OF LOSS.--

16 (a) A customer or any person authorized to draw on
17 [~~the~~] an account if there is more than one person may stop
18 payment of any item drawn on the customer's account or close the
19 account by an order to the bank describing the item or account
20 with reasonable certainty received at a time and in a manner
21 that affords the bank a reasonable opportunity to act on it
22 before any action by the bank with respect to the item described
23 in Section 55-4-303 NMSA 1978. If the signature of more than
24 one person is required to draw on an account, any of these
25 persons may stop payment or close the account.

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1 (b) A stop-payment order is effective for six
2 months, but it lapses after fourteen calendar days if the
3 original order was oral and was not confirmed in [~~writing~~] a
4 record within that period. A stop-payment order may be renewed
5 for additional six-month periods by a [~~writing~~] record given to
6 the bank within a period during which the stop-payment order is
7 effective.

8 (c) The burden of establishing the fact and amount
9 of loss resulting from the payment of an item contrary to a
10 stop-payment order or order to close an account is on the
11 customer. The loss from payment of an item contrary to a
12 stop-payment order may include damages for dishonor of
13 subsequent items under Section 55-4-402 NMSA 1978."

14 Section 17. Section 55-4A-105 NMSA 1978 (being Laws 1992,
15 Chapter 114, Section 201, as amended) is amended to read:

16 "55-4A-105. OTHER DEFINITIONS.--

17 (a) In this article:

18 (1) "authorized account" means a deposit
19 account of a customer in a bank designated by the customer as a
20 source of payment of payment orders issued by the customer to
21 the bank; if a customer does not so designate an account, any
22 account of the customer is an authorized account if payment of a
23 payment order from that account is not inconsistent with a
24 restriction on the use of that account;

25 (2) "bank" means a person engaged in the

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1 business of banking and includes a savings bank, savings and
2 loan association, credit union and trust company; a branch or
3 separate office of a bank is a separate bank for purposes of
4 this article;

5 (3) "customer" means a person, including a
6 bank, having an account with a bank or from whom a bank has
7 agreed to receive payment orders;

8 (4) "funds-transfer business day" of a
9 receiving bank means the part of a day during which the
10 receiving bank is open for the receipt, processing and
11 transmittal of payment orders and cancellations and amendments
12 of payment orders;

13 (5) "funds-transfer system" means a wire
14 transfer network, automated [~~clearinghouse~~] clearing house or
15 other communication system of a [~~clearinghouse~~] clearing house
16 or other association of banks through which a payment order by a
17 bank may be transmitted to the bank to which the order is
18 addressed;

19 (6) [Reserved]; and

20 (7) "prove" with respect to a fact means to
21 meet the burden of establishing the fact (Paragraph (8) of
22 Subsection (b) of Section 55-1-201 NMSA 1978).

23 (b) Other definitions applying to this article and
24 the sections in which they appear are:

25 "acceptance" Section 55-4A-209 NMSA 1978;

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1 "beneficiary" Section 55-4A-103 NMSA 1978;
2 "beneficiary's bank" Section 55-4A-103 NMSA 1978;
3 "executed" Section 55-4A-301 NMSA 1978;
4 "execution date" Section 55-4A-301 NMSA 1978;
5 "funds transfer" Section 55-4A-104 NMSA 1978;
6 "funds-transfer system
7 rule" Section 55-4A-501 NMSA 1978;
8 "intermediary bank" Section 55-4A-104 NMSA 1978;
9 "originator" Section 55-4A-104 NMSA 1978;
10 "originator's bank" Section 55-4A-104 NMSA 1978;
11 "payment by beneficiary's
12 bank to beneficiary" Section 55-4A-405 NMSA 1978;
13 "payment by originator to
14 beneficiary" Section 55-4A-406 NMSA 1978;
15 "payment by sender to
16 receiving bank" Section 55-4A-403 NMSA 1978;
17 "payment date" Section 55-4A-401 NMSA 1978;
18 "payment order" Section 55-4A-103 NMSA 1978;
19 "receiving bank" Section 55-4A-103 NMSA 1978;
20 "security procedure" Section 55-4A-201 NMSA 1978;
21 and
22 "sender" Section 55-4A-103 NMSA 1978.

23 (c) The following definitions in Chapter 55, Article
24 4 NMSA 1978 apply to this article:

25 [~~"clearinghouse" Section 55-4-104 NMSA 1978;~~]

underscored material = new
[bracketed material] = delete

1 "clearing house" Section 55-4-104 NMSA 1978;

2 "item" Section 55-4-104 NMSA 1978;

3 and

4 "suspends payments" Section 55-4-104 NMSA 1978.

5 (d) In addition, Chapter 55, Article 1 NMSA 1978
6 contains general definitions and principles of construction and
7 interpretation applicable throughout this article."

8 Section 18. Section 55-9-503 NMSA 1978 (being Laws 2001,
9 Chapter 139, Section 74) is amended to read:

10 "55-9-503. NAME OF DEBTOR AND SECURED PARTY.--

11 (a) A financing statement sufficiently provides the
12 name of the debtor:

13 (1) if the debtor is a registered organization,
14 only if the financing statement provides the name of the debtor
15 indicated on the public record of the debtor's jurisdiction of
16 organization [~~which~~] that shows the debtor to have been
17 organized;

18 (2) if the debtor is a decedent's estate, only
19 if the financing statement provides the name of the decedent and
20 indicates that the debtor is an estate;

21 (3) if the debtor is a trust or a trustee
22 acting with respect to property held in trust, only if the
23 financing statement:

24 (A) provides the name specified for the
25 trust in its organic documents or, if no name is specified,

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1 provides the name of the settlor and additional information
2 sufficient to distinguish the debtor from other trusts having
3 one or more of the same settlors; and

4 (B) indicates, in the debtor's name or
5 otherwise, that the debtor is a trust or is a trustee acting
6 with respect to property held in trust; [~~and~~]

7 (4) if the debtor is an individual, only if the
8 financing statement provides the individual's name as shown on
9 the individual's driver's license, passport or identification
10 card; and

11 [~~(4)~~] (5) in other cases:

12 (A) if the debtor has a name, only if it
13 provides the individual or organizational name of the debtor;
14 and

15 (B) if the debtor does not have a name,
16 only if it provides the names of the partners, members,
17 associates or other persons comprising the debtor.

18 (b) A financing statement that provides the name of
19 the debtor in accordance with Subsection (a) of this section is
20 not rendered ineffective by the absence of:

21 (1) a trade name or other name of the debtor;
22 or

23 (2) unless required under Subparagraph (B) of
24 Paragraph [~~(4)~~] (5) of Subsection (a) of this section, names of
25 partners, members, associates or other persons comprising the

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[bracketed material] = delete

1 debtor.

2 (c) A financing statement that provides only the
3 debtor's trade name does not sufficiently provide the name of
4 the debtor.

5 (d) Failure to indicate the representative capacity
6 of a secured party or representative of a secured party does not
7 affect the sufficiency of a financing statement.

8 (e) A financing statement may provide the name of
9 more than one debtor and the name of more than one secured
10 party.

11 (f) For purposes of this section, "identification
12 card" means:

13 (1) for a New Mexico resident, the
14 identification card authorized by Section 66-5-401 NMSA 1978;

15 (2) for a nonresident of New Mexico, an
16 equivalent identification card issued by the state of the
17 individual's residence in lieu of a driver's license; or

18 (3) an identification card issued by the United
19 States to members of the uniformed services or their
20 dependents."

21 Section 19. EFFECTIVE DATE.--The effective date of the
22 provisions of this act is July 1, 2009.

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